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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
TRENTON VICINAGE**

DONALD J. TRUMP FOR  
PRESIDENT, INC., REPUBLICAN  
NATIONAL COMMITTEE, NEW  
JERSEY REPUBLICAN STATE  
COMMITTEE,

Plaintiffs,

v.

TAHESHA WAY, in her official  
capacity as Secretary of State of New  
Jersey,

Defendant.

Hon. Michael A. Shipp, U.S.D.J.

Civil Action No. 20-10753

**CIVIL ACTION**

**(ELECTRONICALLY FILED)**

**DECLARATION OF ROBERT GILES IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

1. I am the Director of the New Jersey Division of Elections (“DOE”), in the New Jersey Department of State, for which the Secretary of State (“Secretary”) is the agency head. I have held this position since May 2008. I am thoroughly

familiar with the State's electoral process and the duties and responsibilities imposed on the various county election officials, with whom I interact on a regular basis.

2. Under Title 19, Election Laws of New Jersey, each county clerk is mandated to print all the ballots for an upcoming election.

3. The Statewide Voter Registration System ("SVRS"), which is overseen by the Secretary, is the official repository for the State's election records, including the number of mail-in ballots issued by the county clerks for an upcoming election, the number of voted mail-in ballots returned to the county boards of election, and the number of Active registered voters in each county.

4. Pursuant to P.L. 2020, c. 72 (codified as N.J. Stat. Ann. §19:63-31), vote-by-mail ("mail-in") ballots will be sent to all Active registered voters in New Jersey. N.J. Stat. Ann. §19:63-31(a). As of September 20, 2020, New Jersey has 5,817,923 Active registered voters, meaning at least 5,817,923 mail-in ballots will be sent out for the 2020 General Election.

5. According to the DOE's website, voter turnout in the 2016 General Election was a 68 percent. If voter turnout for the November 2020 General Election is comparable to that of 2016, then the county boards could receive around 3,956,187 returned mail-in ballots. For comparison, a total of approximately 355,771 mail-in ballots and 70,161 provisional ballots were returned in the 2016 General Election.

6. On May 29, 2020, the Secretary received correspondence from Thomas J. Marshall, General Counsel and Executive Vice President, of the United States Postal Service (“USPS”). The correspondence sought to inform the Secretary and DOE of key aspects of USPS’s delivery processes and how they might affect election-related mail, including mail-in ballots for the November 2020 General Election.

7. In the May 29 correspondence, USPS advised that all election mail, including ballots, must be First-Class Mail and that “[m]ost First-Class Mail is delivered in 2-5 days.” A true and correct copy of the May 29, 2020 USPS letter is attached hereto as Exhibit 1.

8. The aforementioned items were reiterated by Mr. Marshall in correspondence directed to the Secretary dated July 30, 2020. A true and correct copy July 30, 2020 USPS letter is attached hereto as Exhibit 2.

9. New Jersey held its Primary Election on July 7, 2020, which in accordance with Governor Murphy’s Executive Order 144 (“EO 144”) was conducted primarily through mail-in ballots that were sent to all Active registered Democratic and Republican voters. EO 144 §1. EO 144 directed the county boards of election to canvass all otherwise valid mail-in ballots postmarked on or before July 7, 2020 received no later than July 14, 2020 at 8:00 p.m. Id. §14.

10. For the July 2020 Primary Election, county boards of elections had until July 24, 2020 to finish canvassing and counting ballots and to report results to the county clerks for certification. EO 144 ¶18; N.J. Stat. Ann. §19:23-55.

11. Due to the large number of mail-in ballots received and the boards inability to begin canvassing provisional ballots until July 14 at 8:00 p.m., several boards of elections, specifically those for Camden, Monmouth, Middlesex, and Somerset counties, had to petition Superior Court for an extension of at least a week to canvass and count ballots.

12. On July 8, 2020, USPS sent correspondence to various county boards of election throughout New Jersey informing them that certain ballots delivered by USPS the morning of July 8, 2020 and postmarked that same date had actually been received by USPS on or before July 7, 2020. If these ballots had been sent on or before July 7, 2020 and otherwise complied with the statutory requirements, then the board could count and canvass them.

13. On July 9, 2020, I received e-mail correspondence from Justin Glass at USPS with a chart of how many ballots post offices in New Jersey reported as being postmarked and delivered to each county board of election on July 8, 2020. The chart reflects a portion of the ballots that were received by USPS on or before the deadline for mail-in ballots but were mis-marked and is substantially as follows:

<b>County Board of Election</b>	<b>Number of ballots delivered</b>
Bergen County	71
Essex County	90
Hudson County	55
Hunterdon	55
Middlesex County	1266
Somerset County	293
Morris County	1017
Passaic County	551
Sussex County	116
Warren County	189
Union County	522
Atlantic County	206
Burlington County	741
Camden County	0
Cape May County	0
Cumberland County	0
Gloucester County	63
Mercer County	0
Monmouth County	500
Ocean County	800
Salem County	0

14. A true and correct copy of the July 9, 2020 e-mail from USPS is attached hereto as Exhibit 3.

15. P.L. 2020, c. 72 requires the Secretary and county election officials to inform voters of the rules and procedures for the November 2020 General Election. P.L. 2020, c. 72 at §2, ¶w. DOE has already begun implementing a thorough public information campaign to educate New Jersey voters about election laws and procedures for the November 2020 General Election, including those changes made pursuant to P.L. 2020, c. 72.

16. DOE's website has information available to voters that they will automatically receive their ballots in the mail, that returned ballots must be postmarked on or before November 3 and received by the boards on or before November 10, ballots may be placed in secure ballot drop boxes by 8:00 p.m. on November 3, ballots may be delivered in person to voters' boards of elections' offices by 8:00 p.m. on November 3, and that ballots may be brought by voters to their polling places by 8:00 p.m. on November 3. The website also informs voters that the only in-person voting on November 3 will be by provisional ballot or by individuals with disabilities needing an accommodation for an accessible voting device. New Jersey Division of Elections, How to Vote in New Jersey (Sept. 15, 2020) <https://nj.gov/state/elections/vote-how-to.shtml> (last visited Sept. 21, 2020).

17. DOE has also created a Frequently Asked Questions ("FAQ") for its website designed to address voters' most common questions about the November 2020 General Election on topics, such as voter registration, ballot drop boxes, bearers, voting in-person and provisional ballots, signature verification/matching, and poll workers. The FAQ informs voters about how a ballot will be automatically mailed to them, that ballots postmarked on or before November 3, 2020 that are received by November 10, 2020 at 8:00 p.m. will be canvassed (if it meets all other statutory requirements), and that ballots without a postmark and ballots mismarked and confirmed by the post office to have been received by the post office on or before

November 3 will be canvassed (if it meets all other statutory requirements) if received by the board within 48 hours of the closing of polls. A true and correct copy of the FAQ is attached hereto as Exhibit 4.

18. DOE also retained the services of Dana Communications, a marketing firm, to collaborate on marketing outreach regarding the election rules and procedures for the November 2020 General Election, including radio, television, print, and billboard advertisements. These advertisements are designed to inform voters about how and when vote by mail will occur for the General Election.

19. DOE has begun running radio messages on a variety of radio stations throughout the state, including WNNJ-FM, WCBS-FM, WPAT-FM, WKXW-FM, WPST-FM, WENJ-FM, WCHR-FM, WFPG-FM, WNJE-AM, WOBN-FM, WPGG-AM, WPUR-FM, and WSJO-FM. The thirty second radio message is as follows:

This is an official message for New Jersey voters about the November General Election. For 2020, all active registered voters in New Jersey will automatically receive their ballots in the mail. Remember to vote, sign, seal and return it—at the post office, in a secure ballot drop box, at your county Board of Elections office, or at your polling place. Safe... Simple... Secure... Vote by 8 pm November third. Learn more at VOTE-DOT-NJ-DOT-GOV.

20. The 15 second radio message is as follows:

This is an official message for New Jersey voters. To keep our 2020 election safe, simple and secure, all active registered voters will automatically receive their ballots by

mail. How you return it is up to you. Learn more at  
VOTE-DOT-NJ-DOT-GOV.

21. DOE will be issuing guidance to the county boards of elections about the placement and security of ballot drop boxes for the November 3 General Election and this information will be promptly relayed to the public. Notwithstanding, P.L. 2020, c. 72 requires that drop boxes be secured, placed at locations equipped with surveillance cameras, and be available for use by voters 24 hours a day. P.L. 2020, c. 72 at §1, ¶b(2)(a). Each county shall have no fewer than 10 secure drop boxes. Id. §1, ¶b(2)(b)-(c).

22. Since A4475 permits boards of elections to begin opening mail-in ballots no earlier than 10 days before Election Day, boards must implement measures to ensure the security and secrecy of those ballots. P.L. 2020, c. 72, §2, ¶m. In addition to measures already being planned or implemented by the boards, DOE will issue guidance to the county boards of elections on maintaining strict confidentiality and secrecy of any ballots canvassed and counted prior to Election Day. Boards will be permitted to canvass and count ballots up to 10 days prior to Election Day but will not be permitted to tabulate the results. Anyone authorized to canvass ballots that reveals the contents of a mail-in ballot prior to the closing of the polls shall be guilty of a third degree crime. P.L. 2020, c. 72 at §3.

23. To count the ballots, the county elections staff run the ballots through scanners that read the votes cast on each ballot. The scanner does not automatically



display the votes of each ballot or the tabulation of all the ballots while scanning. The scanning software stores the votes of the ballots scanned and only provides a tabulation of the results when the county elections staff run a tabulation report. The only practical way to obtain a vote tally/tabulation of the votes is for county elections staff to run the tabulation report. The Boards and Board staff will not be permitted to run the tabulation report prior to November 3, 2020 at 8:00 p.m. Further, the Division of Elections will be conducting an audit of the county boards of elections to ensure that no tabulation report was run prior to November 3, 2020 at 8:00 p.m. The Boards and Board staff will be advised in the forthcoming guidance that the audits will be conducted and will be required to sign a certification acknowledging that they are not permitted to run the tabulation report prior to November 3, 2020 at 8:00 p.m. and that they are aware of the criminal penalties associated with knowingly disclosing the contents of a mail-in ballot prior to November 3, 2020 at 8:00 p.m.

24. Roughly two-thirds (15 of 21) of the county elections offices have begun reaching out to voters to inform them of the changes to the election process for the November election.

25. For example, Bergen County, Morris County, Camden County, Monmouth County, Atlantic County, Burlington County, Cumberland County, Hunterdon County, Passaic County, Mercer County, Somerset County, and Sussex

County Boards of Elections, as well as the Hunterdon County, Ocean County, and Salem County clerks, have posted information on their county websites advising voters of the changes implemented for the 2020 General Election.

26. Moreover, state and county elections officials have advised the public that all active, registered voters will automatically receive a mail-in ballot without need to apply, and that voters may return their mail-in ballot by mail up on or before November 3, 2020.

27. A number of counties have already begun mailing their ballots and, in some instances, ballots have been completed and received by the boards.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 9/25/2020

  
Robert Giles, Director